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(1) A is entitled to the section 34 credit with respect to the portion of the October 4, 1954, dividends which is distributed to him even though the determination of whether the trust is deemed to have received the October 4 dividends is included in his gross income is made under the Internal Revenue Code of 1939. The credit allowable to the trust is reduced proportionately to the extent A is deemed to have received the October 4 dividends. A is not entitled to a credit with respect to the dividends received by the trust on December 3, 1953, and April 3, and July 5, 1954, because, although he receives after July 31, 1954, the distribution resulting from the trust’s receipt of dividends, he is deemed to have received the dividends ratably with the trust on dates prior to July 31, 1954. In determining the exclusion under section 116 to which he is entitled, all the dividends received by the trust in 1954 and distributed to him are aggregated with any other dividends received by him in 1954 because, since he is deemed to have received such dividends in 1954 and therefore within a taxable year ending after July 31, 1954. He is not, however, entitled to the exclusion for the dividends received by the trust in December 1953.

Example 2. (i) A simple trust reports on the basis of a fiscal year ending July 31. It receives dividends on October 3, 1953, and January 4, April 3, and July 5, 1954. It distributes the dividends to A, its sole beneficiary, on September 1, 1954. The trust, receiving dividends in a taxable year ending prior to August 1, 1954, is entitled neither to the dividend received credit under section 34 nor the dividend exclusion under section 116.

(ii) A (reporting on the calendar year basis) is entitled to the section 34 credit with respect to the dividends received by the trust on December 3, 1953, and January 4, April 3, and July 5, 1954. It distributes the dividends to A, its sole beneficiary, on September 1, 1954. Neither the trust nor A is entitled to a credit under section 34 or an exclusion under section 116.

§ 1.683-3 Application of the 65-day rule of the Internal Revenue Code of 1939.

If an amount is paid, credited, or to be distributed in the first 65 days of the first taxable year of an estate or trust (heretofore subject to the provisions of the Internal Revenue Code of 1939) to which the Internal Revenue Code of 1954 applies and the amount would be treated, if the Internal Revenue Code of 1939 were applicable, as if paid, credited, or to be distributed on the last day of the preceding taxable year, sections 641 through 682 do not apply to the amount. The amount so paid, credited, or to be distributed is taken into account as provided in the Internal Revenue Code of 1939. See 26 CFR (1939) 39.162-2 (c) and (d) (Regulations 118).

§ 1.684-1 Recognition of gain on transfers to certain foreign trusts and estates.

(a) Immediate recognition of gain—(1) In general. Any U.S. person who transfers property to a foreign trust or foreign estate shall be required to recognize gain at the time of the transfer equal to the excess of the fair market value of the property transferred over the adjusted basis (for purposes of determining gain) of such property in the hands of the U.S. transferor unless an exception applies under the provisions of § 1.684-3. The amount of gain recognized is determined on an asset-by-asset basis.

(2) No recognition of loss. Under this section a U.S. person may not recognize loss on the transfer of an asset to a foreign trust or foreign estate. A U.S. person may not offset gain realized on the transfer of a depreciated asset to a foreign trust or foreign estate by a loss realized on the transfer of an appreciated asset to a foreign trust or foreign estate.

(b) Definitions. The following definitions apply for purposes of this section:

(1) U.S. person. The term U.S. person means a United States person as defined in section 7701(a)(30), and includes
a nonresident alien individual who
elects under section 6013(g) to be treated
as a resident of the United States.

(2) U.S. transferor. The term U.S. transferor means any U.S. person who
makes a transfer (as defined in §1.684–2) of property to a foreign trust or for-

eign estate.

(3) Foreign trust. Section 7701(a)(31)(B)
defines foreign trust. See also §301.7701–7 of this chapter.

(4) Foreign estate. Section 7701(a)(31)(A) defines foreign estate.

Example 1. Transfer to foreign trust. A
transferor who transfers property to a foreign
trust or foreign estate must comply
with the reporting requirements under
section 6048.

Examples. The following examples
illustrate the rules of this section. In
all examples, A is a U.S. person and FT
is a foreign trust. The examples are as
follows:

Example 1. Transfer to foreign trust. A transfers
property that has a fair market value of
1000X to FT. A’s adjusted basis in the prop-
erty is 400X. FT has no U.S. beneficiary with-
in the meaning of §1.679–2, and no person is
treated as owning any portion of FT. Under
paragraph (a)(1) of this section, A recognizes
gain at the time of the transfer equal to
600X.

Example 2. Transfer of multiple properties. A transfers property Q, with a fair market
value of 1800X, and property R, with a fair
market value of 2000X, to FT. At the time of
the transfer, A’s adjusted basis in property Q
is 700X, and A’s adjusted basis in property R
is 2200X. FT has no U.S. beneficiary within
the meaning of §1.679–2, and no person is
treated as owning any portion of FT. Under
paragraph (a)(1) of this section, A recognizes
the 300X of gain attributable to property Q.
Under paragraph (a)(2) of this section, A does
not recognize the 200X of loss attributable to
property R, and may not offset that loss
against the gain attributable to property Q.

Example 3. Transfer for less than fair market
value. A transfers property that has a fair
market value of 1000X to FT in exchange for
400X of cash. A’s adjusted basis in the prop-
erty is 200X. FT has no U.S. beneficiary with-
in the meaning of §1.679–2, and no person is
treated as owning any portion of FT. A is re-
quired to recognize gain equal to 900X imme-
diately upon transfer of the property to the
trust. This result applies even though A
might otherwise have been allowed to defer
recognition of gain under another provision of
the Internal Revenue Code.

Example 4. Exchange of property for private
annuity. A transfers property that has a fair
market value of 1000X to FT in exchange for
FT’s obligation to pay A 50X per year for the
rest of A’s life. A’s adjusted basis in the prop-
erty is 100X. FT has no U.S. beneficiary with-
in the meaning of §1.679–2, and no person is
treated as owning any portion of FT. A is re-
quired to recognize gain equal to 900X imme-
diately upon transfer of the property to the
trust. This result applies even though A
might otherwise have been allowed to defer
recognition of gain under another provision of
the Internal Revenue Code.

Example 5. Transfer of property to related for-
eign trust in exchange for qualified obligation.
A transfers property that has a fair market
value of 1000X to FT in exchange for FT’s ob-
ligation to make payments to A during
the next four years. FT is related to A as defined
in §1.679–1(c)(5). The obligation is treated as
a qualified obligation within the meaning of
§1.679–4(d), and no person is treated as own-
ing any portion of FT. A’s adjusted basis in
the property is 100X. A is required to recog-
nize gain equal to 900X immediately upon
transfer of the property to the trust. This re-
result applies even though A might otherwise
have been allowed to defer recognition of
gain under another provision of the Internal
Revenue Code.

[T.D. 8956, 66 FR 37899, July 20, 2001]

§ 1.684–2 Transfers.

(a) In general. A transfer means a di-
rect, indirect, or constructive transfer.

(b) Indirect transfers—(1) In general.
Section 1.679–3(c) shall apply to deter-
mine if a transfer to a foreign trust or
foreign estate, by any person, is treat-
ed as an indirect transfer by a U.S. per-
son to the foreign trust or foreign es-
etate.

(2) Examples. The following examples
illustrate the rules of this paragraph
(b). In all examples, A is a U.S. citizen,
FT is a foreign trust, and I is A’s uncle,
who is a nonresident alien. The exam-

ple are as follows:

Example 1. Principal purpose of tax avoid-
ance. A creates and funds FT for the benefit
of A’s cousin, who is a nonresident alien. FT
has no U.S. beneficiary within the meaning
of §1.679–2, and no person is treated as own-
ing any portion of FT. In 2004, A decides to
transfer additional property with a fair mar-
ket value of 1000X and an adjusted basis
of 600X to FT. Pursuant to a plan with a prin-
cipal purpose of avoiding the application of
section 684, A transfers the property to I. I
subsequently transfers the property to FT.
Under paragraph (b) of this section and
§1.679–3(c), A is treated as having trans-
ferred the property to FT.